IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.400 OF 2005 IN C.P.790 OF 2003

Asea Brown Boveri Ltd. ...Petitioners.
Vs.
Bhavari Starch Ltd. ...Respondents.

Ms. Shakuntala Sharma for the Petitioners.

Mr. S. Bangar with Mr. Sunil Pareira i/by Legal Assoociates for the Respondents.

CORAM : A.M. KHANWILKAR, J.
DATED : 30/6/2005

P.C.:

1. Heard counsel for the parties. Perused the affidavit in support of the company petition.

2. It is seen that this court passed consent order on 18.2.2005 in Company Petition No.791 of 2003 where under the applicant company was required to deposit sum of Rs.11/- lacs in this court within a period of 12 weeks from that date. That was a conditional order. Failure to comply the condition would result in admission of the company petition and requiring advertisement thereof. However, before 12-weeks time provided under order dated 18.2.2005 would expire, the applicant company made reference to BIFR Board on 5.4.2005. The said reference was received by the board on 20.4.2005 and eventually

registered on 4.5.2005. Whereas, 12 weeks time granted under order dated 18.2.2005 was to expire on 13.5.2005. On the above basis, it is submitted on behalf of the applicant that the company petition cannot proceed further as the applicant company is under BIFR. Reliance is placed on the decision of the Apex Court reported in **A.I.R.1988 S.C. 2064 in the case of Real Value Appliances Ltd. Vs. Canara Bank and others,** in particular, Paragraph 15 thereof and another decision in the case of **M/s. Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd. reported in AIR 2000 S.C. 1583,** in particular, dictum in Paragraph 6 of the latter Judgment. The legal principle stated by the Apex Court in the aforesaid Judgments are rightly pressed into service in support of the stand of the applicant company. In the circumstances, this court has no option but to allow the application in terms of prayer clause (a). Ordered accordingly. No order as to costs.

(A.M. KHANWILKAR,J.)